

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, JUNE 15, 1987, 7:30 P.M.

Mayor Pro-tem Bill Thorpe called the meeting to order. Council Members present were:

- Julie Andresen
- David Godschalk
- Jonathan Howes
- David Pasquini
- Nancy Preston
- R. D. Smith
- Arthur Werner

Mayor Wallace was absent, excused. Manager Taylor was also absent, excused. Also present were Acting Town Manager Ron Secrist, Assistant Town Manager Sonna Loewenthal and Town Attorney Ralph Karpinos.

Mayor Pro-tem Bill Thorpe introduced some journalism students in the audience who had been visiting the area.

Public Hearing on Henderson Street House - Application for Special Use District Rezoning

Sonna Loewenthal, Assistant Town Manager, asked that agenda memorandum #1, dated June 15, 1987, "Henderson Street House - Application for Special Use District Rezoning (SUD80-B-49)," be entered into the record of the hearing along with the applicant's statement of justification and vicinity map. Ms. Loewenthal said the public hearing had been called to discuss rezoning to a special use zone. She stated that in a special use zone any use requires a special use permit. Ms. Loewenthal said the process for rezoning the property to the OI-1S zone was different from the process of obtaining a special use permit for the zone. She said that it was therefore important that the comments in this hearing be directed toward the issue of the rezoning request alone. She stated that the next public hearing was the appropriate hearing to discuss the specific use of the property.

Roger Waldon, Planning Director, gave a presentation on the application for rezoning a parcel of land located at 210 Henderson Street to OI-S. He said the property was currently zoned R-3 and was adjacent to Town Center zoning district. He said that if the rezoning were approved it would become effective only upon approval of a following special use permit.

Mr. Waldon stated that he had received a letter from an attorney representing several clients in the neighborhood and that he had distributed this letter to the Council and would like it included in the record of the hearing. Mr. Waldon said the letter points out several "concerns" with the application, the primary of which

was that an application needed to include detailed information regarding the principals of the entity, if the entity who made the application was other than an individual. Mr. Waldon said there was an application on file prior to coming to this public hearing which included the signature of the Board of Trustees of the owner of the property (Orange County Women's Center). He stated that the staff had also obtained a copy of the by-laws of the Orange County Women's Center, Inc. and a copy of their latest annual report which included a list of the twenty-two members of the Board of Directors. He said this information was on file in the Planning Department with the application for this proposal.

Mr. Waldon said that there were three possible justifications for a rezoning: 1) corrects a manifest error in the Zoning Atlas; 2) was appropriate due to changed or changing conditions; or 3) achieves the purpose of the Comprehensive Plan. He stated that the staff did not believe the first two justifications were appropriate in this instance. Mr. Waldon said therefore the staff felt the only justification for rezoning was that the amendment would achieve the purpose of the Comprehensive Plan. He stated that the Council had adopted goals and objectives which state that community facilities and services which meet the physical, social, and cultural needs of the population and which are available to all residents be encouraged and located and designed so as to promote the public health, safety, and well-being. He said the Comprehensive Plan states that the Town should assist and encourage the continuation of such services. He said the property under consideration for rezoning was a good location for the general type of community service that was called for in the Comprehensive Plan, and that rezoning the property to OI-1S could achieve the purposes of the Comprehensive Plan. Mr. Waldon said, however, that the Comprehensive Plan also indicated that existing residential neighborhoods should be protected, and as such, an argument could be made that denial of the rezoning request served the purposes of the Comprehensive Plan. He stated on balance the staff felt given the property's location and special authority and flexibility granted to the Council to review and approve Special Use Permits in a Special Use Zoning District, whether or not to approve the rezoning was a discretionary matter for the Council.

Mr. Waldon said in the memorandum was a listing of recommendations from advisory boards on the rezonings, with the Historic District Commission recommending denial of the application for rezoning, and the Planning Board recommending approval of the rezoning.

Robert Page, an attorney representing the applicant, Orange County Women's Center, pointed out that the property was bounded by Town Center and Office-Institutional zones on the south. He said the applicant had to purchase the property prior to acquiring a rezoning because their option to purchase would have expired. He said that he felt a correction of a manifest error in the zoning atlas had been done in 1986 with the adoption of

the special use zoning text amendment. Mr. Page said this ordinance had been designed to allow the Town more flexibility in its zoning powers to rezone a particular piece of property and then restrict it to a specific use, rather than to allow the owner a broad range of uses within that district. He said he also felt there were changes in the area. He said North Street acted as an excellent buffer to prohibit any further expansion of non-residential uses in the area.

Coolie Monroe, representing the Orange County Women's Center Housing Committee, said the Women's Center was justified in requesting the rezoning by satisfying the goals stated in the Comprehensive Plan by providing a community facility which met the physical, social and cultural needs of the population and which were available to all residents. She said this objective encouraged citizen participation. She stated that the Comprehensive Plan also required that the facilities for public use be conveniently located and accessible to all modes of transport and that the property on Henderson Street was ideal.

Katherine Eyre, a real estate appraiser and representing the applicant, said in her opinion with the adjacent Town Center and R-6 zoning districts to the site, a change in zoning to OI-1S would not be detrimental to the neighborhood, and would be appropriate under the statement of highest and best use of the property as defined by real estate appraisal. She said this definition was that the highest and best use was the utilization of a property to its best and most profitable use and is that use chosen among reasonably and probable and legally alternative uses which are found to be physically possible, appropriately supported and financially feasible to result in highest land value.

Alan Rimer, representing the Planning Board, said the Board voted 5-3 in favor of the rezoning. He said it was the Planning Board's opinion that the area where the property was located was in a transition and the transition could extend to the property and enhance the neighborhood and probably would not cause any kind of domino effect to the surrounding properties. He said the Planning Board members who voted against the proposal did so because they felt it was either an encroachment into the neighborhood or that in fact it was an inappropriate use in the neighborhood. Mr. Rimer said the Planning Board had not found many corollaries in the community with this proposal, and had been very specific in their recommendation saying that if the development did not constitute what it had been purported to be in the Planning Board's presentation then it should not be approved, and if the Women's Center abandoned the use, the abandoned use should be immediately recorded and the property owners be required to come back and have the property rezoned to R-3.

Assistant Town Manager Loewenthal stated that a protest petition had been filed and found to be valid. She said this meant that

when the Council took action on the rezoning request it would require seven affirmative votes to approve the rezoning.

Robert Epting, an attorney representing several property owners, argued against the rezoning request saying he felt it would constitute spot or contract zoning. He introduced into the record a copy of the N.C. Court of Appeals case on special use zoning. He said he was surprised to see the staff admit to contradictions in the Comprehensive Plan with regard to protecting established neighborhoods and encouraging community service agencies. Mr. Epting said he did not think there should be any difficulty in deciding which issue was more important. He indicated that protecting established neighborhoods should be the prime goal of the Comprehensive Plan. He said of course the Town should promote community service agencies but not by saying that these agencies could establish their places of businesses wherever they chose, even in neighborhoods. Mr. Epting concluded by reading a letter from Mrs. Georgia Kaiser in which she expressed concern about the gradual erosion of residential areas by the new ordinance which allowed offices in the Historic District and other residential districts of the Town.

Karen Murphy, speaking as a resident, said she disagreed with the Manager's memorandum which stated that the property under request for rezoning was unique. She also stated that there were five other zoning districts available to the applicant for their use without rezoning this property. Ms. Murphy commented that the budget request to the Town by the Women's Center for the next year included \$8,000 for rental of office space. She said with this amount of money the Women's Center could rent office space in other parts of Town. She commented that if the Council granted the rezoning request for the Women's Center would not the Council have to approve every similar request from community service agencies. Ms. Murphy concluded by stating that in her opinion rezoning the property would be in violation of the Comprehensive Plan and a detriment to the neighborhood.

Kathleen Cheape, speaking as a resident, spoke against the rezoning request. She pointed out that this was the third attempt by the applicant to change the use of the land.

James Haar, representing the Alliance of Neighborhoods, spoke against the rezoning request. He said the Alliance was opposed to any Special Use Zonings in all neighborhoods. (For copy of text, see Clerk's files.)

Catherine Ward, speaking as a resident, spoke against the rezoning request. She said neighborhoods should be kept intact for homes and not businesses.

Elizabeth Soileau, speaking as a resident, spoke against the rezoning request saying the area should remain residential.

Marcia Herman-Giddens, speaking as a resident, spoke against the rezoning request. She said the zoning ordinance was binding and ran with the land, and as such, any office/institutional use could be allowed if the property were rezoned. She asked how the Council would decide who would and would not be granted special use zoning. She expressed concern that any community service agency could make a similar request and be granted the special use zoning. Ms. Herman-Giddens said that this would further erode the integrity of residential neighborhoods.

Sally Massengale, speaking as a resident, spoke against the rezoning request, saying it represented an encroachment into the neighborhood. She introduced a map showing the residential nature of the area. She commented that since the Women's Center had taken over the property there had been problems with trash on the lawns, cars and motorcycles parked on the side and front lawns of the property and general neglect of the upkeep of the property. Ms. Massengale expressed concern that if the Council rezoned this property, the lot next to it would also be sold with the idea of applying for Special Use Zoning due to changed conditions. She urged the Council to vote against the rezoning request.

Scott Herman-Giddens, speaking as a resident, said he disagreed with the Planning Board's statement that the area under consideration for rezoning was under transition. He urged the Council to keep the residential character of the area. He pointed out on a map, which he introduced, that Cobb Terrace was an oasis of green, residential neighborhood, surrounded by more intense uses. He expressed concern that approval of the rezoning would be setting a precedent. He introduced a petition signed by several citizens against the rezoning request. (See Clerk's files.)

Bill Thompson, speaking as a resident, spoke against the rezoning request. He said the rezoning would be an encroachment upon the neighborhood and would provide an opening for other rezoning requests.

Rosalie Massengale, speaking as a resident, spoke against the rezoning request. She said that in 1979 the Cobb Terrace/Henderson Street area requested and became a part of the Historic District in an effort to preserve the neighborhood from encroachment of other uses. Ms. Massengale said this action meant that the property owners had to submit to the Historic District Commission (HDC) for approval any proposed changes to their property. She pointed out that the HDC had helped preserve the area as a residential neighborhood. She said the HDC had recommended against the proposed rezoning and urged the Council to concur and deny the application.

Joe Sparling, speaking as a resident, spoke in support of the rezoning request. He said he did not feel a community service agency was out of place in neighborhoods. He said he did not think the concerns about setting a precedent and the domino

theory applied in this case. Mr. Sparling said he did not think the building was conducive to residential uses.

Lightning Brown, speaking as a resident, spoke against the rezoning request. He said there were major traffic concerns associated with the rezoning and special use request. He said there was little room either on the street or in the neighborhood for the additional vehicles an office/institutional use would generate. He said the traffic flow on Henderson Street was already cramped and congested, and the addition of an office use in the area would only further exacerbate the problem. He urged the Council to deny the rezoning request on the grounds that it was in conflict with the Comprehensive Plan's goal of preserving the neighborhood and because it would have a negative impact on the traffic situation in the area.

Council Member Preston asked where the traffic problems were occurring on Henderson Street. Mr. Brown replied that one of the primary problem areas was across the street from the proposed rezoning. He said there was an alley used by Chapel Hill Realty, the sorority and adjacent restaurant, and that cars already had trouble negotiating in and out of the alley and along Henderson Street.

Jon Condoret, speaking as a resident, said he had originally been in favor of the rezoning request, but upon further consideration had been convinced that the rezoning represented an encroachment into the residential neighborhood and could provide the impetus for further rezoning requests.

Joe Herzenberg, speaking as a resident, spoke against the rezoning request. He introduced a letter from Mary Arthur Stoudemire of the Chapel Hill Preservation Society in which she also spoke against the rezoning and implied that the property would be suitable for highly desirable downtown multiple family use. Mr. Herzenberg said the area was residential and if any transition was occurring it was towards more residential uses rather than office/institutional uses. He asked the Council how they could deny an application for the adjacent property if they granted the rezoning request for the Women's Center.

Robert Joesting, speaking as a resident, said he had talked with the staff of the Institute of Government who had indicated a lack of belief that special use zoning could be upheld in court as it seemed to constitute spot zoning. He said whatever changed or changing conditions which exist in the neighborhood were those towards a stronger residential use than any office use. Mr. Joesting stated that approval of the rezoning request would not be consistent with the Comprehensive Plan.

James Webb, speaking as a resident, spoke against the rezoning request saying it was an invasion of a nonconforming use into the residential neighborhood. He said use of the special use zoning

ordinance would allow the piecemeal erosion of established zoning boundaries. (For copy of text, see Clerk's files.)

Anne Fleming Ocorr speaking as a resident, spoke against the rezoning saying she felt it would be precedent setting and would allow further encroachment of non-residential uses in neighborhoods.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO REFER TO THE MANAGER AND ATTORNEY.

Council Member Preston asked the Town Attorney to clarify what would happen if the property were rezoned, a special use permit granted and then abandoned. Attorney Karpinos responded that if the Council granted the Special Use Zoning and Special Use Permit then the property could only be used for the use granted in the Special Use Permit. He said if that use ceased, then a new Special Use Permit would have to be issued before anyone could use the site. Mr. Karpinos stated that if the use granted under the Special Use Permit ceased, in the interim anyone could request a general use rezoning of the property.

Council Member Werner asked what uses were currently allowed in the R-3 zoning district. Mr. Waldon replied that permitted uses in a R-3 zone were churches, child day care, rooming house, school, public/cultural facilities, and public use facilities. Mr. Werner asked if the Town were to establish a women's center then there would not be a need to rezone the property? Mr. Waldon replied that he would have the staff research this and give the information to the Council when the item was brought back for Council action.

THE MOTION TO REFER PASSED UNANIMOUSLY, (8-0).

Public Hearing on Henderson Street House - Application for Special Use Permit

Citizens wishing to comment were sworn in by the Town Clerk.

Assistant Town Manager Sonna Loewenthal asked that agenda item #2, dated June 15, 1987, "Henderson Street House - Application for Special Use Permit (SUD80-B49)" be entered into the record of this hearing along with the Applicant's:

- Project Fact Sheet
- Statement of Justification
- Traffic Impact Report

Roger Waldon, Planning Director, stated that this application for a Special Use Permit would only be valid if the Council approved the Special Use Zoning request. He said there were two key issues: compliance with the Comprehensive Plan and compatibility

with the existing neighborhood. He stated that there were conflicting objectives in the Comprehensive Plan dealing with preserving existing neighborhoods and encouraging community service agencies. Mr. Waldon said a balance needed to be reached and a determination made as to which of these two goals should dominate. He stated that there had been concern expressed about the compatibility of the proposal with the existing neighborhood but that the staff felt any threat to the residential character of the neighborhood would be minimal.

Council Member Andresen said that the site plan indicated the elimination of a large magnolia tree in order to allow for a drive to the parking area. She asked if any consideration had been given to relocating the drive. Mr. Waldon said the staff had reviewed the site and had decided that the proposed parking area and drive was the best for the site because of the steep grades and to minimize the impact of the parking area from the street.

Council Member Preston asked if there would be garbage collection from the northern side of the property, next to the Thompson property. Mr. Waldon replied that the Manager's recommendation was to place a planted buffer along that side of the site and to have all services be provided via the parking lot area on the southern side of the site.

Robert Page, an attorney representing the applicant, commented that the applicant was in the process of discussing the possibility of moving the magnolia tree instead of cutting it down to allow room for the parking lot drive. He stated that the Women's Center had not let the property fall into ruin or disrepair. He said the application was for a women's center that would be in operation primarily from 9-5 each day, and that he did not feel the traffic impact on the neighborhood from the facility would create a problem.

Betty Kenan, representing the Orange County Women's Center, gave a brief history of the Women's Center, the types of programs it offers, and its quest to find a suitable location to house its facility. She said the Women's Center had only owned the property since this past April. She urged the Council to approve the Special Use Permit.

Coolie Monroe, representing the Orange County Women's Center, said the Women's Center would be compatible with the neighborhood. She commented that the building would maintain its residential facade and that additional parking for the facility would be provided on the Southern Bell lot. She introduced into the record petitions signed by citizens in support of the Special Use Permit.

Cindee Wolf, representing the Orange County Women's Center and John R. McAdams Company, spoke in support of the proposal. She said the parking area was designed to provide a looped driveway

with parking on a level lower than the street so as to effectively buffer it from the street. She said it would be possible to move the magnolia tree to one of the proposed planting areas. She said the applicant favored the Planning Board's recommendation to allow for the drive on the northern property line to be left open to allow for delivery service.

Katherine Eyre, a real estate appraiser representing the Orange County Women's Center, said the house was unique in its configuration of rooms and that as such it made it difficult to utilize as a residence without massive renovation. She urged the Council to approve the Special Use Permit request.

Verla Insko, speaking as the Chair-elect of the Orange County Women's Center, said she had been involved in the Women's Center since 1972 and that it was an organization that served the needs of the community. She agreed that preservation of the house was important and stated that the Women's Center would make this a priority.

Virginia Travis, representing the Orange County Women's Center, said the Center had begun in a small house on West Rosemary and did not want to become a tenant of a suburban office complex. She said they wanted to maintain their identity with the heart of Chapel Hill. She said that if the Women's Center were granted the Special Use Permit, she believed they would be good neighbors.

Erica Rothman, representing the Women's Center, said the Center was an important resource for the people of Chapel Hill and that it would be a good neighbor.

Eva Clontz, representing the Orange County Women's Center, spoke in support of the Special Use Permit request.

Roger Waldon, representing the Planning Board, said the Board recommended approval of the Special Use Permit.

Robert Epting, an attorney representing area residents, asked Mr. Waldon if the Special Use Permit considered by the Planning Board had restricted the use to the Orange County Women's Center. Mr. Waldon replied yes and that the Manager's recommendation in that it restricted the use to a women's center. Mr. Epting argued that the Planning Board had not reviewed the Special Use Permit application before the Council because of the difference in reference to a women's center versus the Orange County Women's Center in the stipulations.

Assistant Manager Loewenthal said the Manager recommended adoption of Resolution A, approving the Special Use Permit with conditions.

Betty White, speaking as treasurer to the Orange County Women's Center, said she did not feel the use would be an intrusion in

the neighborhood. She said the SUP would prevent general office use and limit the use to a women's center. She indicated that the Horace Williams House was a good example of non-residential use in a residential neighborhood. She said the requested \$8,000 in the budget for rent was the estimate of the cost of rental of space in the area where the Women's Center was currently located.

Robert Epting, speaking as an attorney for area residents, spoke against the Special Use Permit because it was associated with the Special Use Zoning request. He said his clients were not against the Women's Center or the work done by the organization but that this was not a good reason to grant the SUP or the rezoning.

Karen Murphy, speaking as a resident, spoke against the SUP request. She disputed the staff memorandum's comments that the property was unique. She said there were five reasonably alternative zones available to the Women's Center. Ms. Murphy commented that if the Center were struggling with funds now, how did they expect to be able to afford the extensive renovation costs on the property on Henderson Street. She said that granting the SUP to this organization for this site would mean the Council would have to do the same for other requests.

Marcia Herman-Giddens, speaking as a resident, said she had no quarrel with the purpose of the Women's Center but that she wanted to maintain the integrity of the neighborhood and that the best way to do this was to keep the property residential. (For copy of text, see Clerk's files.)

Joe Herzenberg, speaking as a resident, spoke against the Special Use Permit request and said he did not believe the site/house was unsuitable for residential uses. He said it could easily be converted into condominiums. He stated that the Horace Williams House was not similarly situated to the Henderson Street house and that he was opposed to office building uses in a residential neighborhood.

Jon Condoret, speaking as a resident, spoke against the Special Use Permit request saying he felt it would be an intrusion into the neighborhood of a non-conforming use.

James Haar, representing the Alliance of Neighborhoods, spoke against the SUP. (For copy of text, see Clerk's files.)

William Thompson, speaking as a resident, spoke against the SUP request saying he felt it would be an encroachment into the residential neighborhood and could promote further SUP requests.

Scott Herman-Giddens, speaking as a resident, spoke against the Special Use Permit request. He introduced a map pointing out that all of the adjoining property owners to the site were against the rezoning and the SUP. (For copy of text, see Clerk's files.)

Lightning Brown, speaking as a resident, spoke against the SUP request. He said it violated sections in the design manual and Comprehensive Plan dealing with traffic planning. (For copy of text, see Clerk's files.)

Rosalie Massengale, speaking as a resident, spoke against the SUP request. (For copy of text, see Clerk's files.)

Sally Massengale, speaking as a resident, spoke against the Special Use Permit request. She also stated that there was a dispute over the northern property line of the site. She said she knew of individuals who were interested in purchasing the site for residential purposes. (For copy of text, see Clerk's files.)

Kathleen Cheape, speaking as a resident, spoke against the SUP request. She said the Women's Center had been working for three years to get this special use permit and have known of the opposition. She said that she did not feel the use was appropriate in a residential neighborhood. (For copy of text, see Clerk's files.)

Elizabeth Soileau, speaking as a resident and adjoining property owner, said the driveway on the northern line of the site did not belong to the Women's Center but to her and other heirs of the Thompson property and that any closing of the driveway and planting of a buffer would have to be approved by them. She spoke against the SUP request. (For copy of text, see Clerk's files.)

Catherine Ward, speaking as a resident, spoke against the rezoning and SUP request. (For copy of text, see Clerk's files.)

Charles Hardman, speaking as a resident, spoke against the SUP request.

James Webb, speaking as a resident, spoke against the SUP request and urged the Council to protect neighborhoods from this type of intrusion.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER HOWES TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (8-0).

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER SMITH TO RECESS THE HEARING UNTIL WEDNESDAY, JUNE 17, 1987 AT 7:30 P.M. THE MOTION PASSED UNANIMOUSLY, (8-0).

The meeting recessed at 11:55 p.m.

